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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1958

No. 171

WILLIAM JOSEPH HANLON,

Petitioner,

against

WATERMAN STEAMSHIP CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JACOB RASSNER,
Attorney for Petitioner.

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Supreme Court of the United States

October Term, 1958

No.

WILLIAM JOSEPH HANLON,

Petitioner,

against

WATERMAN STEAMSHIP CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above cause on April 2, 1959.

Opinions Below

The opinion of the United States District Court for the Southern District of New York, dated July 29, 1958 is unreported.

The opinion of the Court of Appeals in this case is reported at 265 F. 2d 206.

Jurisdiction

The judgment of the Court of Appeals was entered on April 2, 1959. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Question Presented

Has the Court of Appeals for the Second Circuit correctly interpreted an Act of Congress (46 U. S. C. Sec. 745) [1] in holding that an injured seaman has no cause of action against a corporation operating ships for the United States Government as a General Agent, irrespective of the fact that the General Agent is charged with its own negligence and personal tort?

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[1] § 745. Causes of action for which suits may be brought; limitations; exceptions; actions which may not be revived; interest on claims

"Suits authorized by this chapter may be brought only on causes of action arising since April 6, 1917: Provided, That suits based on causes of action arising prior to the taking effect of this chapter shall be brought within one year after this chapter goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises; Provided further, That the limitations in this section contained for the commencement of suits hereunder shall not bar any suit against the United States or the United States Shipping Board Emergency Fleet Corporation, brought hereunder on or before December 31, 1932, if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law or an action under section 250(1) of Title 28, was commenced prior to January 6, 1930, and was or may hereafter be dismissed because not commenced within the time or in the manner prescribed in this chapter, or otherwise not commenced or prosecuted in accordance with its provisions; Provided further, That such prior suit must have been commenced within the statutory period of limitation for common-law actions against the United States cognizable in the Court of Claims: Provided further, That there shall not be revived hereby any suit at law, in admiralty, or under sections 40(20), 250, 251, 254, 257, 258, 287, 289, 292, 761-765 of Title 28 heretofore or hereafter dismissed for lack of prosecution after filing of suit; And provided further, That no interest shall be allowed on any claim prior to the time when suit on such claim is brought as authorized hereunder. March 9, 1920, c. 95, § 5, 41 Stat. 526; June 30, 1932, c. 315, 47 Stat. 420."

Reason for Granting the Writ

It seems that the Senate Report,[2] rather than the language of the Act itself,[3] which has omitted a great deal of the language of the Senate report, has been used (improperly interpreted) for the dismissal of the complaint in the case at bar and in other cases similarly decided.

1. THERE IS A CONFLICT OF AUTHORITY:

The case of *Arnold* v. *Luckenbach Steamship Company*, 160 F. Supp. 807, decision by Judge Dimock, is authority for suit against the General Agent.

The cases of *Richardson* v. *American President Lines*, 144 F. Supp. 641 and *Atlantic Coast Line R. Co.* v. *Agwilines, Inc.*, 195 F. 2d 459, hold to the contrary.

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[2] Senate Report No. 1782, June 7, 1950 (To accompany H. R. 483) House Report No. 1292, Aug. 22, 1949 (To accompany H. R. 483), contained in U. S. Code Congressional Service, 81st Congress, Second Session, 1950, Legislative History (p. 4209) at page 4210:

> "The law, however, did not legislatively settle the question of exclusivity of remedy. The Supreme Court then, in 1942, in Brady v. Roosevelt Steamship Company (317 U. S. 575), held that the Suits in Admiralty Act, by furnishing as in personam remedy against the United States, did not free the agent from liability for the torts of its employees.
>
> This case was followed in 1946 by the Court's decision in Hust v. Moore-McCormack (328 U. S. 707). These cases together were popularly taken as an endorsement by the highest court in the land of the theory of duality of remedy in all cases. Accordingly, many litigants, relying upon these decisions, brought their suits against the agent only because of the opportunity for a jury trial which many of them preferred. Then the Supreme Court handed down its decisions in Caldarola v. Eckert (332 U. S. 155 (1947)) and Cosmopolitan Shipping Co. v. McAllister (335 U. S. 870 (1949)), which clarified, in the opinion of the committee, the rule previously announced so as to make it plain that the agent, while liable for the negligence of its own employees, was not liable for the negligence of the civil-service masters and crews with whom the United States manned the vessels. For the negligence of those, the United States was the only responsible party."

[3] See footnote 1 on page 2.

The Supreme Court of the United States held in the case of *Brady* v. *Roosevelt S. S. Co., Inc.*, 317 U. S. 575, that a General Agent is liable for torts committed by its own employees.

A contrary view seems to have been expressed in the case of *Williams* v. *U. S.*, D. C. Va. 1954, 133 F. Supp. 317, affirmed 228 F. 2d 129, certiorari denied 76 S. Ct. 1054, 351 U. S. 986; rehearing denied 77 S. Ct. 26, 352 U. S. 860, 1 L. Ed. 2d 71.

There is confusion and uncertainty as to just what the Act means and, therefore, the United States Government and shipping companies acting as General Agents, and all officers and crews of such ships are concerned as to the correct meaning of the Act, particularly in view of the fact that different Courts have interpreted the Act differently.

Statement of the Case

History

This is an action instituted by the petitioner, a seaman, formerly employed on the S.S. Bucyrus Victory, who was injured as a result of an assault aboard the aforesaid vessel by another member of the crew, on August 7, 1953.

It is alleged in the complaint that respondent managed, operated and controlled the aforesaid vessel and acted under and pursuant to an agreement of agency with the owner of the vessel. It is further alleged that the respondent was under a duty to keep and maintain the vessel and its appurtenances in a safe and seaworthy condition, to provide personnel in accordance with the customary practice of commercial operators and the terms and conditions of the usual collective bargaining agreement, and in so acting under the terms of the agreement, provided a seaman who used excessive force and violence, injuring the petitioner, all as a result of the respondent's causing the vessel to be manned in such a fashion as to render the vessel unsea-

worthy. It is further alleged that the respondent negligently failed to provide the petitioner with prompt, adequate and proper medical care, ordering him to continue with his duties although injured, and has failed to provide maintenance to the petitioner.

The agency contract submitted by the respondent included Article "3" by the terms of which provision was made for respondent to procure and make available the officers and men required to fill the complement of the vessel. It was further provided that the methods and practices to be employed by the General Agent in procuring the crew were to be in accordance with certain specific procedures.

The gravamen of this action is the personal tort of the respondent in its breach of duty as aforesaid.

The petitioner was engaged in his duties in serving dinner in the officers' mess on August 7, 1953, and thereafter was proceeding to dispose of waste materials when a fellow seaman, Coles, in a thoroughly drunken condition struck the petitioner, causing him to fall against deck cargo striking his head, causing unconsciousness. Petitioner was compelled to stay at his quarters for a period of approximately seven days. The petitioner was compelled to return to work although his injuries were serious and known to be such. The chief mate not only ordered petitioner to work but terminated all treatment.

Subsequently, petitioner returned to Mobile, Alabama, and received treatment at the Marine Hospital.

Medical records submitted to the respondent indicate that the head injury resulted in seizures, blackouts and an indicated fractured skull.

The District Court below granted summary judgment to the respondent solely on the basis of the complaint and the agreement of agency. The decision was affirmed by the United States Court of Appeals for the Second Circuit on April 2, 1959.

Argument

Under the Act (46 U. S. C. Sec. 745) General Agents are granted immunity from liability "—for the negligence of the civil-service masters and crews with whom the United States manned the vessels."

It is our contention that this does not exonerate the General Agent when such General Agent undertakes to man the vessel and does so with an unseaworthy master or crew by reason of incompetency, inadequacy, dangerous propensities or other factors which render the vessel not reasonably safe for seamen employed thereon.

It does violence to common sense and logic to conclude that Congress intended to grant immunity to a steamship company acting as a General Agent, when its total disregard or negligent conduct resulted in the vessel being manned with incompetent or dangerous officers or crew, responsible for the proximate cause of injury to other officers or crew members of the ship.

The fact that the United States Government is legally bound to respondent in damages for the injuries thus inflicted is hardly justification for granting immunity to the company which brought about the injury through its tortious conduct.

We respectfully submit that Congress never intended such a result and therefore pray that this Honorable Court grant the petition in the furtherance of substantial justice. This question is a matter of grave concern, as heretofore stated, not only to the officers and crew of every United States Government owned vessel, operated by a General Agent, but to the United States Government and the shipping companies operating as General Agents as well.

Respectfully submitted,

JACOB RASSNER,
Attorney for Petitioner.

Opinion of United States Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 191—October Term, 1958

(Argued March 5, 1959 Decided April 2, 1959)

Docket No. 25363

WILLIAM JOSEPH HANLON, JR.,
Plaintiff-Appellant,

v.

WATERMAN STEAMSHIP CORPORATION,
Defendant-Respondent.

Before:

MEDINA and HINCKS, *Circuit Judges*,
and MATHES, *District Judge*.*

The plaintiff appeals from a summary judgment entered in the United States District Court for the Southern District of New York, Richard K. Levet, *Judge*. *Affirmed*.

JACOB RASSNER, New York, N. Y., for plaintiff-appellant.

JOSEPH M. COSTELLO, New York, N. Y. (HANRAHAN and COSTELLO, New York, N. Y., on the brief), for defendant-respondent.

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* United States District Judge for the Southern District of California, sitting by designation.

PER CURIAM:

It was not contested below, nor is it upon this appeal, that the United States owned and operated the S. S. Bucyrus Victory, upon which the alleged assault upon the plaintiff seaman by a fellow seaman took place. The defendant was not an operating agent of the United States; its only connection with the vessel arose from its general agency contract with the United States which required [Article 3(d)] that "[t]he General Agent shall procure and make available to the Master for engagement by him the officers and men required to fill the complement of the vessel (i.e., the Bucyrus Victory)." Since the defendant was not the owner, clearly it was not liable under a Jones Act claim. *Cosmopolitan Shipping Co.* v. *McAllister*, 337 U. S. 783. And this holding is equally conclusive against the plaintiff on his second and third causes of action (negligence in providing medical aid and maintenance and cure, respectively) which lie only against an owner.

On appeal, however, the plaintiff argues that its first cause of action also states a common law claim in that the defendant was negligent in the discharge of its contractual obligation to provide suitable seamen for engagement by the Master. But in this, the defendant was acting under the General Agency Contract with the United States, as indeed the complaint expressly alleges. For harm so caused a third person such as the plaintiff, the United States as principal would be liable. And under the Suits in Admiralty Act, 46 U. S. C. A. § 745, it is provided: "Where a remedy is provided by this Chapter, it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent * * * whose act or omission gave rise to the claim." *Williams* v. *United States*, 4 Cir., 228 F. 2d 129, 132-133, cert. denied 351 U. S. 986; *Atlantic Coast Line R. Co.* v. *Agwilines, Inc.*, 5 Cir., 195 F. 2d 459; *Richardson* v. *American President Lines*, D. C. S. D. N. Y., 144 F. Supp. 641; *Arnold* v. *Luckenbach S.S. Co.*, D. C. S. D. N. Y., 162 F. Supp. 58

Brady v. *Roosevelt Steamship Co.*, 317 U. S. 575, relied on by the plaintiff, was decided seven years before the quoted language was added to the statute by the amendment of December 13, 1950, 64 Stat. 1112. And for the suggestion that the plaintiff, as a third-party beneficiary, had a claim for breach by the defendant of the General Agency Contract, we find no support at all. *Robins Dry Dock & Repair Co.* v. *Flint*, 275 U. S. 303; 5 Corbin on Contracts § 776.

Affirmed.

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No. 171

WILLIAM J. HANEON, JR.,
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against

WATERMAN STEAMSHIP CORPORATION,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

HANRAHAN & COSTELLO
Attorneys for Respondent

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IN THE

Supreme Court of the United States

October Term, 1959

No. 171

WILLIAM J. HANLON, JR.,
Petitioner,

v.

WATERMAN STEAMSHIP CORPORATION,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

Opinions Below

The opinion of the United States District Court for the Southern District of New York is not reported. The opinion of the United States Court of Appeals for the Second Circuit is set out at 265 F. 2d 206.

Jurisdiction

The judgment of the Court of Appeals was entered April 2, 1959. The petition for certiorari was filed on

July 1, 1959. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Question

Whether suit may be brought against the general agent of a government-owned and operated vessel for injuries allegedly resulting from an assault upon petitioner by a fellow seaman and from an asserted lack of adequate medical care aboard.

Statutes

Section 5 of the Suits in Admiralty Act, 41 Stat. 526, as amended in 1950 by 64 Stat. 1112 (46 U. S. C. 745), provides in pertinent part:

> Suits as authorized by this chapter may be brought only within two years after the cause of action arises: *Provided*, That where a remedy is provided by this chapter it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States or any incorporated or unincorporated agency thereof whose act or omission gave rise to the claim: *Provided further*, That the limitations contained in this section for the commencement of suits shall not bar any suit against the United States brought hereunder within one year after December 13, 1950, if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law was timely commenced and was or may hereafter be dismissed solely because improperly brought against any person, partnership, association, or corporation engaged by the United

States to manage and conduct business of a vessel owned or bareboat chartered by the United States or against the master of any such vessel; * * *

Statement

This action was brought by petitioner, a seaman formerly employed on the SS BUCYRUS VICTORY, a vessel owned and operated by the United States through the Maritime Administration, for which respondent Waterman S.S. Corporation was general agent under the standard form agency agreement GAA-3-19-51, 16 Federal Register 2703, March 28, 1951. It sought damages for personal injuries allegedly resulting from an assault upon petitioner by a fellow seaman and from failure to provide proper medical care and payment of maintenance. The action was predicated upon the Jones Act and the general maritime law. Respondent moved on the basis of the complaint and affidavits for an order of dismissal "on the grounds that the wrong party defendant has been named and sued herein."

The District Court (Honorable Richard K. Levet) granted the motion and dismissed the complaint. The Court of Appeals affirmed, invoking 46 U. S. C. 745, which it quoted as providing that "where a remedy is provided by this chapter [against the United States], it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent * * * whose act or omission gave rise to the claim."

Argument

The petition in this case seeks to raise a single issue —which, after full consideration, both courts below

properly determined against petitioner—whether (where petitioner has an undoubted right to proceed against the United States under the Suits in Admiralty Act for any alleged wrongful acts of its general agent, ship-master, crew or other officers, agents, or employees), Congress has withdrawn jurisdiction for a suit against such general agent. The decision below, that such jurisdiction has been withdrawn, is clearly correct, there is no conflict of decision and the case presents no issues which merit review by this Court.

1. In *Weade* v. *Dichmann, Wright & Pugh*, 337 U. S. 801, an action against a general agent of the United States under an agreement similar to that here involved, this Court held that while the officers and crew of the vessel were servants of the United States and not of the agent, the tort complained of might have been committed by persons who were employees of the general agent and not of the United States, and thus constitutes the personal tort of the general agent. The case was remanded for consideration of that possibility. Thereafter, Congress amended the Suits in Admiralty Act so that regardless of the personal tort of a general agent, the right to sue would be exclusively against the United States. As thus amended by the Act of December 13, 1950, c. 1136, 64 Stat. 1112 (46 U. S. C. 745), the statute provides as follows:

> Suits as authorized by this chapter may be brought only within two years after the cause of action arises: *Provided*, That where a remedy is provided by this chapter it shall hereafter be exclusive of any other action by reason of the same

> subject matter against the agent or employee of the United States * * * whose act or omission gave rise to the claim.

That this clear withdrawal of jurisdiction for suits against general agents was in accordance with the intent of Congress is shown by the report of the Senate Judiciary Committee with respect to the purpose of the quoted proviso:

> It is provided that where suit is authorized against the United States it is exclusive of any other action by reason of the same subject matter against the agent or employee of the Government agency involved. [S. Rep. 2535, 81st Cong. 2d Sess., p. 2.]

2. Prior to the decision of the court below the question had been the subject of judicial review by the Fourth and Fifth Circuits. In *Williams* v. *United States*, 228 F. 2d 129, 132, 133, certiorari denied 351 U. S. 986, the Court of Appeals for the Fourth Circuit, considering the case of a seaman who alleged that the personal fault of the general agent had aggravated a mental condition and resulted in his breakdown, held that he was precluded from suing the general agent because the proviso to the 1950 amendment made his remedy against the United States exclusive. In *Atlantic Coast Line RR Co.* v. *Aguilines*, 195 F. 2d 459, 461, the Court of Appeals for the Fifth Circuit affirmed a summary judgment in favor of a general agent although plaintiff-appellant (like petitioner here) sought to establish the general agent's personal liability despite the 1950 proviso by invoking this Court's hold-

ings in *Brady* v. *Roosevelt S. S. Co.*, 317 U. S. 575. The Fifth Circuit expressly declared: "The remedy against the United States provided by the Public Vessels and Suits in Admiralty Acts is exclusive."[1]

In the presence of the statute's plain language, the legislative reports and the decisions of two courts, petitioner's suggestion (Pet. 6) that "it does violence to common sense and logic" to conclude that Congress has made the right of suit against the United States exclusive of suit against the general agent and that Government liability "is hardly justification for granting immunity" to the agent, is footless.

3. The power of Congress to substitute petitioner's exclusive right to sue the United States for his remedy by suit against the general agent is as unquestionable as its intention to do so. It is well established that, "The particular remedy existing at the date of the [obligation] may be altogether abrogated if another equally effective for the enforcement remains or is substituted for the one taken away." *Richmond Corp.* v. *Wachovia Bank*, 300 U. S. 124, 128; *Crozier* v. *Krupp*, 224 U. S. 290, 312; *Hurley* v. *Kincaid*, 285

[1] Petitioner's reliance on *Arnold* v. *Luckenbach S. S. Co.*, 160 F. Supp. 807 (S.D.N.Y.), as contrary to the Fourth and Fifth Circuit decisions cannot be accepted since the case was later dismissed (162 F. Supp. 58) because of 46 U. S. C. 745. See also *Richardson* v. *American President Lines*, 144 F. Supp. 641, where in dismissing suit against the general agent, the court declared: "Plaintiff's first contention—that 46 U.S.C.A. 745, as amended in 1950, was not intended to change the rule laid down in the *Weade* case—flies in the face of the plain and unambiguous language of section 745. * * * The mere fact that certain acts otherwise clearly within the scope of the agency were perhaps performed negligently does not take such acts outside the agency relationship." And since the United States would be liable for the acts, suit against the agent was prohibited.

U. S. 93; *Richmond Co.* v. *United States*, 275 U. S. 331, 334; *Burrill* v. *Locomobile Co.*, 258 U. S. 34.[2] As petitioner's claims are governed by maritime law, there can be no objection that the creation of the exclusive remedy by Congress results in withdrawing the right to jury trial previously conferred by the Jones Act, 46 U. S. C. 688. *Crowell* v. *Benson*, 285 U. S. 22, 45. It is also significant that petitioner's claim arose long after the 1950 amendment was enacted and its meaning established by court decision.

Conclusion

For the foregoing reasons, we respectfully submit that the petition for certiorari should be denied.

Respectfully submitted,

HANRAHAN & COSTELLO
Attorneys for Respondent

July, 1959.

LEAVENWORTH COLBY
of Counsel

[2] See also, *Block* v. *Hirsch*, 256 U. S. 135, 158; *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337, 341; *Toneyman* v. *Hanan*, 302 U. S. 375; *Honeyman* v. *Jacobs*, 306 U. S. 539, 542; *Yearsley* v. *Ross Construction Co.*, 309 U. S. 18, 22; *Timken-Detroit Axle Co.* v. *Alma Motor Co.*, 144 F. 2d 714 (C. A. 3), reversed on other grounds 329 U. S. 129.